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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re:)	Chapter 11
)	
CONGOLEUM CORPORATION,)	
)	Case No. 20-18488 (MBK)
Debtor. ¹)	
)	
)	
)	

**OCCIDENTAL CHEMICAL CORPORATION’S JOINDER TO MOTION OF
DVL, INC. AND DVL KEARNY HOLDINGS, LLC FOR A STAY PENDING A
DECISION BY THE UNITED STATES DISTRICT COURT ON DVL’S
MOTION TO WITHDRAW THE REFERENCE OF THE DEBTOR’S MOTION
FOR APPROVAL OF SETTLEMENT WITH BATH IRON WORKS CORPORATION**

Occidental Chemical Corporation (“OCC”) hereby joins (the “**Joinder**”) the *Motion of DVL, Inc. and DVL Kearney Holdings, LLC for a Stay Pending a Decision by the United States District Court on the DVL’s Motion to Withdraw the Reference of the Debtor’s Motion for*

¹ The last four digits of the Debtor’s federal tax identification number are 8678. The Debtor’s corporate headquarters is located at 3500 Quakerbridge Road, Mercerville, New Jersey 08619.

Approval of Settlement with Bath Iron Work's Corporation and Adversary Proceeding No. 20-01439 Filed by Bath Iron Works Corporation or in the Alternative to Stay Pending Appeal (the “**Motion to Stay**”) [Docket No. 509] filed by DVL, Inc. and DVL Kearny Holdings, LLC (together, “**DVL**”) on November 24, 2020. In support of this Joinder, OCC respectfully states as follows.

OCC has not appeared in or filed a proof of claim in this Chapter 11 case and it seeks no recovery from the estate of Debtor Congoleum. Disregarding that fact, Debtor Congoleum has filed a *Motion for Entry of An Order Approving A Settlement Agreement Pursuant to Fed. R. Bankr. P. 9019 By And Between The Debtor and Bath Iron Works Corporation* (the “**Settlement Motion**”) [Docket No. 483] that seeks – and indeed is conditioned expressly on – the entry by this Court of “findings of fact” benefitting another non-debtor, Bath Iron Works Corporation (“**BIW**”) that BIW intends to use against OCC in a CERCLA action OCC filed in 2018 against BIW and others in the United States District Court for the District of New Jersey (the “**CERCLA District Court Action**”).² In that action, OCC seeks to compel BIW to pay its fair share of the costs to respond to environmental contamination caused by BIW and others in Operable Unit 2 of the Diamond Alkali Superfund Site, the Lower 8.3 Miles of the Passaic River. In addition to these ostensibly *mandatory* findings of fact, one finding includes a required “conclusion of law” stating that the other findings are intended to be *res judicata* in the litigation between two non-debtors in the District Court.

OCC has serious concerns with this Court holding a hearing on the Settlement Motion. This Court lacks subject matter jurisdiction to enter the settlement-mandated findings, particularly where (a) OCC has not filed a proof of claim or otherwise subjected itself to

² See Case 2:18-cv-11273-MCA-JAD, *Occidental Chemical Corporation v. 21st Century Fox et al.* CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act and is found at 42 U.S.C. §9601 *et seq.*

jurisdiction of this Court, (b) “related to” jurisdiction is lacking, and (c) the findings concern contribution claims between two non-debtors in the CERCLA District Court Action, a matter that is not related to Debtors’ bankruptcy. The Court also lacks adjudicatory authority to enter the proposed findings, which are for the benefit of BWI, a non-debtor, and are intended to be used against OCC, another non-debtor, in non-bankruptcy litigation pending in a non-bankruptcy federal court.

As a result, and through this Joinder, OCC joins in the request of DVL, another non-debtor litigant, to stay proceedings on the Settlement Motion pending a ruling on the *Motion of DVL, Inc. and DVL Kearny Holdings, LLC to Withdraw the Reference of the Debtor’s Motion Seeking Approval of A Proposed Settlement with Bath Iron Works Corporation and The Adversary Proceeding Filed By Bath Iron Works Corporation* (the “**Motion to Withdraw the Reference**”) [Docket No. 508], filed by DVL in the District Court. OCC also intends to file a joinder to a portion of the Motion to Withdraw the Reference³ OCC reserves its rights to object to any effort by non-debtor BIW to obtain findings here that purport to bind OCC, another non-debtor, or to use them in any way against OCC in the CERCLA District Court Action.

For these reasons, through this Joinder, OCC hereby adopts, and incorporates by reference, the positions, legal arguments and authorities set forth by DVL in the Motion to Stay.

Wherefore, OCC respectfully requests that this Court stay consideration of the Settlement Motion until the District Court rules on the Motion to Withdraw the Reference, and enter such other and further relief as is just and proper.

³ OCC will not take a position on that portion of the Motion to Withdraw the Reference that also seeks a stay pending an appeal by DVL because OCC was not a party to that proceeding.

Dated: December 7, 2020

By /s/
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